

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

CRP.No. 328 of 2007(B)

AGAINST THE ORDER IN EA 370/04 EP 194/00. IN
OS.618/1989 of II ADDL.SUB COURT,THRISSUR
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REVN. PETITIONER/ 1ST RESPONDENT IN E.A.370 & PETITIONER IN
E.A. NO.1418/2002

BABY, S/O.PORINCHU, KUNDUKULANGARA
HOUSE, POOTHOLE DESOM, ARANATTUKARA,
THRISSUR.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS/PETITIONER & RESPONDENTS 2 TO 5 IN EA 370/2004

1. KIZHAKKEDATH FINANCE,
JUICE STREET, ERNAKULAM, KOCHI, REPRESENTED BY
ITS MANAGING PARTNER STANLEY JOSE K.,
S/O.KURIAKOSE, VADAVUKODE VILLAGE, KUNNATHUNAD
TALUK, ERNAKULAM DIST.
2. FRANCIS,
S/O.EDAKKALATHUR LASAR,
MANNUTHY DESOM, OLLUKKARA VILLAGE, THRISSUR
TALUK, THRISSUR DIST.
3. GRACY,
S/O.EDAKKALATHUR FRANCIS, MANNUTHY DESOM,
OLLUKKARA VILLAGE, THRISSUR TALUK, THRISSUR DIST.
4. GEORGE,
S/O.KANNAMBUZHA INASU, KURIACHIRA DESOM,
KOORKKENCHERY VLLAGE, THRISSUR TALUK,
THRISSUR DIST.
5. THE SOUTH INDIAN BANK LTD.,
THRISSUR, REPRESENTED BY ITS GENERAL MANAGER,
MISSION QUARTERS, THRISSUR.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.P. Balachandran, J.

C.R.P. No. 328 of 2007

Dated this the 9th day of April, 2007

ORDER

The decree holder in O.S. 618/1989 on the file of the Sub Court, Thrissur who has purchased the property belonging to the 1st judgment debtor in court auction on 14.1.2002 and obtained sale certificate on 24.7.2002 is the petitioner, he having not been able to get delivery of the property so purchased by him consequent on the obstruction rendered by the 1st respondent who has earlier purchased the property in court sale on 21.2.2000; obtained sale certificate on 12.8.2000 and taken delivery of the property on 17.12.2001 in execution of the decree in O.S. 832/1987. It is contended before me by the learned counsel for the petitioner that the encumbrance which was to be produced, to have the property brought to sale had been produced and that it did not disclose any encumbrance over the property and that therefore the petitioner is a bona fide purchaser and he should not be deprived of the fruits of the

decree which was obtained by him against the same judgment debtor. The petitioner's counsel has raised vehement arguments objecting to E.A. 370/2004 filed in O.S. 618/89 by the decree holder in O.S. No.832/1987 who has taken delivery of the property on 17.12.2001 and has resisted the delivery in O.S. 618/1989. E.A. 370/2004 is filed invoking sections 47 and 151 of the Code of Civil Procedure. According to the learned counsel, Section 47 has no application as the 1st respondent was neither a plaintiff nor a defendant nor legal heir of plaintiff or defendant and so he cannot file any petition under Section 47 seeking a declaration for which according to the learned counsel a separate suit has to be filed.

2. I fail to appreciate the argument. There is no need to consider the maintainability of the application filed under Sections 47 and 151 of the C.P.C when the purchaser of property in an earlier court sale who has taken delivery as early as on 17.12.2001 obstructs delivery of the property subsequently purchased by the petitioner in court auction for which sale certificate was obtained only as late as 24.7.2002. After the first

court sale there is nothing in relation to the same property that remains to be sold in court auction subsequently. The fact that the encumbrance certificate did not show the right of the 1st respondent in the court sale is no reason to hold that the 1st respondent is not having title over the property which he took delivery of as early as on 17.12.2001 on the basis of sale sannath obtained by him in execution of the decree in O.S. 832/1987. The sale sannath obtained by the petitioner therefore does not operate on the property taken delivery of by the 1st respondent. This C.R.P., in the circumstances is devoid of any merit and is dismissed.

(K.P.Balachandran, Judge)

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/True copy/

P.A to Judge